

# Legislature

(LFB Summary of the Governor's Budget Reform Bill: Page 62)

## LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1 3&4	3.5% and 5.0% Budget Reductions (see Paper #1120) Economic Impact Statements (Paper #1185)

## LFB Summary Item for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
2	Reductions for Elimination of Legislative Caucus Staffs

**AGENCY:** Legislature

**LFB PAPER #:** 1185

**ISSUE:** Economic Impact Statements

**ALTERNATIVE:** 2 (if you have to go with the gov on something here, do 4 B1 & 2; C2 - if have to do something under A, do 2, 3 and 4)

**SUMMARY:**

Alternative 2 deletes the gov's recommendations on economic impact statements and directs LRB and Leg. Council to look at the proposal, compare it to what's happening in other states & requires DOA to report to the Governor & Legislature by 12/1/02 with their findings.

Under 4A - economic impact assessments on administrative rules seems like over kill. If we have to go with something here, do (1) - which makes it for the '03-05 biennium only; (2) - which directs the affected agency to prepare the report instead of DOA; and (3) - which deletes a provision requiring the agency to report on the impact to private persons and political subdivisions.

Under 4B - (1) says we'll do economic impact statements on bills only & not do administrative rules; and (2) says we'll do an evaluation of the costs and benefits of complying with the proposed legislation.

C2 says if we're going to do this, then session law needs to be changed to lay the ground rules to be followed by the state agencies for compliance.

**BY:** Cindy



## Legislative Fiscal Bureau

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March 4, 2002

Joint Committee on Finance

Paper #1185

### Economic Impact Statements (Legislature)

[LFB Summary of the Governor's Budget Reform Bill: Page 62, #3; Page 63, #4]

#### CURRENT LAW

No provision.

#### GOVERNOR

Establish statutory requirements for preparation of economic impact statements on bills and on administrative rules as follows:

(1) Bills. Require that any bill having an economic impact on a private person or a political subdivision of this state must have an estimate of the anticipated economic impact of the bill prepared before: (a) any vote is taken on the bill by either house of the Legislature if the bill is not referred to a standing committee; or (b) before any public hearing is held on the bill by any standing committee; or (c) if no public hearing is held on the bill, before any vote is taken on the bill by a standing committee. Provide that the economic impact estimate be prepared by the agency that would be responsible for administering the law creating the economic impact. Specify that economic impact estimates shall be printed and distributed in the same way that fiscal estimates to bills are distributed. Stipulate that biennial budget bills are exempt from the economic impact estimate requirement.

(2) Administrative Rules. Require that the Department of Administration (DOA) prepare, for any proposed administrative rule that may have an economic impact on a private person or a political subdivision of the state, an economic impact assessment. Specify that the assessment must be completed before the proposed rule is submitted to the Legislative Council's Administrative Rules Clearinghouse. Stipulate that the assessment evaluate the costs and benefits of complying with the proposed rule and the potential impact of the rule on the policy

decisions of private persons and political subdivisions of the state. Provide that the assessment shall also include alternatives to the rule that would reduce any negative impact of the rule on private persons and political subdivisions. Direct that DOA submit the required economic impact assessment to the agency that proposed the rule and to the Legislative Council at the same time that the promulgating agency submits the proposed rule to the Legislative Council's Administrative Rules Clearinghouse. Require that the report to the Legislature that must accompany any proposed administrative rule submitted to the Legislature for its review include any economic impact assessment that has been prepared for the rule.

## DISCUSSION POINTS

1. The state budget office indicates that the reason for these two proposed changes is that the administration believes that there should be a cost/benefit type analysis prepared for both bills and proposed administrative rules in addition to the standard fiscal estimates. In the case of bills, the economic impact statement would be called an economic impact estimate comparable to the current fiscal estimate requirement for bills. In the case of bills, the economic impact statement would be termed an economic impact assessment, but again would be akin to the current fiscal estimate requirement for administrative rules, except that in this case DOA would be preparing the assessment rather than the agency proposing the rule.

2. Under the language of the bill, there is no definition or other criteria given for what measures are to be used to estimate the economic impact of a bill on a private person or political subdivision of the state. While fiscal estimates have no requirement for any direct assessment of a bill's impact on individual citizens of the state, there are requirements for the assessment of a bill's impact on increasing or decreasing general local government fiscal liability. The comparable requirement proposed to be placed on administrative rules, although termed an assessment rather than an estimate, is somewhat more definitive as to what is intended in that it refers to the determination of: (a) "the costs and benefits of complying with the proposed rule"; and (b) "the potential impact of the rule on the policy decisions of private persons and political subdivisions".

3. In general terms, cost/benefit analysis can be said to be aimed at attempting to quantify in economic terms both the costs and the benefits of a proposal or policy. Depending on the definition one uses, the costs and benefits to be measured could be solely fiscal (relating to government finances) or broader in terms of economic impact (effects on the economy). Although not widely used, there are occasions when reference is made to cost/benefit analysis with regard to the estimated societal costs and benefits of a policy. A Legislative Reference Bureau publication once endeavored to explain the concept of economic impact statements by suggesting the following distinction between traditional fiscal estimates and economic impact statements: "Fiscal estimates are narrowly focused and do not include the impact of governmental actions on the private sector and the state economy as a whole. Economic impact statements are intended to be much broader and more sophisticated than traditional fiscal estimates. They not only take into account the financial implications for government, but are

also concerned with such basic economic factors as employment, income levels and distribution, price stability, productivity, marketing efficiency, competition, availability of goods and services and so on."

4. What will be determined to be the necessary elements of an economic impact statement, under the two proposals in the bill, will depend upon the different implementing authorities. In the case of economic impact assessments on administrative rules, under the bill DOA would have complete charge of determining which rules would have economic impact assessments prepared, and what the procedures would be for the assessment analysis and preparation of the actual written assessment. Currently, fiscal estimates are required to be prepared on all administrative rules. In the case of economic impact assessments on bills, the Legislature would presumably have to determine through rules or some other mechanism answers to a number of procedural questions to accomplish implementation of the new requirement. Included in these determinations would be questions of: (a) who would decide which bills require economic impact estimates (the LRB currently makes that determination with respect to which bills require a fiscal estimate); (b) who would handle the preparation of requests for such estimates, the receipt of those estimates from agencies and the distribution to the Legislature; (c) who would develop the instructions, forms and possibly a manual instructing agencies on the preparation of such estimates; and (d) perhaps most importantly, who would make the decision on what information is to be developed and included in the economic impact estimates.

5. A procedural question that could be raised with regard to the proposal for DOA to prepare the economic impact assessments on administrative rules is whether the Legislature wants this information, if it is to be provided to the Legislature, to be controlled by the Department of Administration. Having DOA perform the function would presumably reduce the workload on other state agencies that could occur as a result of this new requirement and would likely provide for a more uniform type of analysis. On the other hand, the Legislature would appear to not have a role in determining what should be included in this new item of information that committees of the Legislature will be using when they review proposed administrative rules and would not be benefiting from receiving the perspective of the administering agency. The Committee could consider whether, if it chooses to approve this proposal, it wants to have DOA perform this function or whether it instead wants to place the requirement on the individual agency that proposed the rule as is currently the case with the preparation of fiscal estimates for rules.

6. The state budget office indicates that the difference between the use of term economic impact estimates in the case of bills and economic impact assessments in the case of administrative rules was because the two provisions were drafted independently of each other and that this was not intended to indicate a difference of what was expected in the estimate/assessment process. If the Committee believes that more specificity is preferred, where possible, and agrees that the more detailed language relating to "costs and benefits of complying with" the rule should also apply to the economic impact estimate requirement for bills, it could incorporate that language in the fiscal estimate requirement provision. The Committee could

also consider whether it wants to include or exclude a requirement that the economic impact statement for bills and/or rules address include the requirement that the preparer address their potential impact on the policy decisions of private persons and political subdivisions of the state. On the one hand it could be argued that it may be hard to qualify such impacts. On the other hand, it could be viewed that this is an aspect that merits discussion, even if it is not qualifiable.

7. In addition to the basic question of the nature of the information that is expected under these new requirements, a related question could be raised as to the potential workload impact that might result from these new requirements. DOA has not made any estimate of the increased workload on DOA (for administrative rules) or on state agencies and the Legislative Reference Bureau (for bills). However, the state budget office indicates that DOA will have to absorb the workload increase for preparation of economic impact statements on rules and assumes that state agencies would have to do the same with regard to preparation of economic impact estimates on bills.

8. There is no ready basis for determining how many administrative rules or how many bills would have to have economic impact statements prepared. To provide at least some frame of reference, however, the number of fiscal estimates on bills and on rules might be examined. Under current procedures, there is simply a uniform requirement that all proposed rules have a fiscal estimate prepared, even if there is no fiscal impact. Consequently, that data is not helpful. However, for the current session to date, almost 80% of the Assembly bills introduced and over 90% of the Senate bills introduced have had a requirement for a fiscal estimate. There is no way to know how many of those bills would have also required an economic impact estimate under the bill. However, if those same percentages were to apply to the number of bills requiring economic impact estimates, some state agencies might have a significant workload increase.

9. A comprehensive list of those states that have economic impact statement requirements has not been compiled by the National Conference of State Legislatures (NCSL). However, NCSL did indicate five states that it is aware of that have an established requirement for preparation of economic impact statements on legislation. Those states were Florida, Maryland, South Carolina and Tennessee. In addition, Ohio has been involved in a pilot program under which a limited number of bills could be selected by the Legislature for the preparation of an economic impact analysis. Florida, Virginia, South Carolina and Illinois are states that were identified by NCSL as requiring some sort of economic impact statement on administrative rules. While each of those states appears to have different requirements and procedures for the preparation of such statements, two themes seem apparent just among these states. One is that whether required separately or as a part of a fiscal note process, there is a focus on the bills' or rules' impacts on private businesses or on certain types or kinds of businesses. For example, Florida's requirement for economic impact statements on bills refers to the impact on the private sector of the state; Maryland's requirement is for the estimated impact on small businesses; South Carolina's requirement is relative to any bill having an impact on health care in the state and on how the private sector would be affected; and Tennessee's requirement relates to economic impact statement on any bill that would create a new mandate

on the health insurance industry. The second is that there appears to be considerable variation in what is expected to be actually included in economic impact statements. For example, Maryland's law refers to estimates directly addressing such factors as the cost of providing goods and services, effect on the workforce and the cost of housing, effect on capital investment, taxation, competition and economic development and the effect on consumer choice. In contrast, South Carolina's requirement on economic impact statements on rules is permissive as to the types of things that may be included in the statement and includes among other things a determination of the costs and benefits associated with the regulation. At the same time, though, South Carolina's statute contains the statement that these requirements are not to be interpreted to require numerically precise cost-benefit analysis. This suggests that there is not a uniform approach that is being followed in those states. It could be argued that a more thorough review of the current practices in those states that have such requirements, a study of what types of cost/benefit information is reasonably attainable, and an evaluation of what would be most useful to the Legislature under a cost/benefit or economic impact analysis should be conducted before such requirements are set in place.

10. Two technical concerns that could be raised if the Committee chooses to approve the proposals would be: (a) whether there should be a delayed effective date for these provisions so that it is clear that they would not apply until the next biennium; and (b) whether it should be specified that the economic impact estimate requirement for bills would not be effective until the joint rules of the Legislature have been amended to: (a) specify the procedures by which economic impact estimates are to be prepared by state agencies and provided to the Legislature; and (b) such other details as the Legislature chooses to include in such rules.

11. If the Committee believes that these proposed changes would be beneficial to the Legislature and its members in review of proposed legislation and administrative rules, then it may wish to approve the Governor's recommendations for the preparation of economic impact estimates on bills by state agencies and/or the preparation of economic impact assessments on administrative rules by the DOA. Another option would be for the Committee to approve only the proposal for the requirement for economic impact assessments on administrative rules and provide that it be a session law provision effective only on a trial basis for the next biennium.

12. Alternatively, if the Committee believes that these changes are not warranted at this time, it could delete the Governor's recommendations. On the other hand, the Committee may wish to have further study of these proposals done before considering such statutory changes. Under this option, the Committee could require that the Department of Administration, in consultation with the Legislative Reference Bureau and the Legislative Council staff, review these proposals in the interim before the next biennial legislative session and direct that the Department of Administration provide a detailed report to the Governor and the Legislature, including an estimate of the costs and benefits of each of the two proposed changes relative to economic impact statements, an evaluation of the different types of economic impact analyses that might be required and an examination on how each of these two requirements might be implemented administratively if they were to be mandated by the Legislature. A report could be required to be provided to the Governor and the Legislature by December 1, 2002 .

## ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.
2. Delete the Governor's recommendations and instead include a session law provision directing the Department of Administration, in consultation with the Legislative Reference Bureau and the Legislative Council staff, to review the proposed language included in the bill and the experiences of other states with regard to mechanisms and procedures for attachment of economic impact statements on bills and on administrative rules. Require that the Department of Administration prepare a report providing its findings and conclusions, including an evaluation of the different ways in which cost/benefit analyses and economic impact evaluations can be used in providing economic impact statements on bills and on administrative rules and submit the report to the Governor and the Legislature by December 1, 2002.

3. Maintain current law.

4. Adopt the Governor's recommendations with one or more of the following modifications:

### **A. Economic Impact Assessments on Administrative Rules**

- (1) Include only the proposal for the preparation of economic impact assessments on administrative rules by the Department of Administration.
- (2) Provide that the preparation of economic impact assessments on administrative rules be established as a session law directive and be effective only for the 2003-05 biennium.
- (3) Provide that the economic impact assessments be prepared by the state agency promulgating the proposed rule rather than by the Department of Administration.
- (4) Delete from the proposal the provision that economic impact assessments on administrative rules include an evaluation of the potential impact of the proposed rule on the policy decisions of private persons and political subdivisions of the state.

### **B. Economic Impact Estimates on Bills**

- (1) Include only the proposal for the preparation of economic impact estimates on bills.
- (2) Include the requirement that economic impact estimates include an evaluation of the costs and benefits of complying with the proposed legislation.

(3) Include the requirement that economic impact estimates include an evaluation of the potential impact of the proposed legislation on the policy decisions of private persons and political subdivisions of the state.

**C. Technical Modifications**

(1) For any portion of the Governor's recommendations that are included, provide that effective date provisions be included to specify that the economic impact assessments for administrative rules or the economic impact estimates for bills would be first effective beginning with the 2003-2004 biennial session period of the Legislature.

(2) If the portion of the Governor's recommendations related to economic impact estimates for bills is adopted, include a session law provision stating that before these requirements become fully effective, the Legislature must amend the joint rules of the Legislature to specify the procedures to be followed by state agencies in the preparation of economic impact estimates on bills and to address any other details of such procedures as the Legislature may choose to include in the joint rules.

Prepared by: Terry Rhodes

MO# 3

①	BURKE	Y	N	A
	DECKER	Y	N	A
	MOORE	Y	N	A
	SHIBILSKI	Y	N	A
	PLACHE	Y	N	A
	WIRCH	Y	N	A
	DARLING	Y	N	A
	ROSENZWEIG	Y	N	A
②	GARD	Y	N	A
	KAUFERT	Y	N	A
	ALBERS	Y	N	A
	DUFF	Y	N	A
	WARD	Y	N	A
	HUEBSCH	Y	N	A
	HUBER	Y	N	A
	COGGS	Y	N	A

AYE 16 NO 0 ABS \_\_\_\_\_

# Program Supplements

(LFB Summary of the Governor's Budget Reform Bill: Page 69)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	3.5% and 5.0% Budget Reductions (see Paper #1120)

# Employment Relations

(LFB Summary of the Governor's Budget Reform Bill: Page 44)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	3.5% and 5.0% Budget Reductions (see Paper #1120)

EMPLOYMENT RELATIONS

Technical Correction to Act 29 Provisions Relating to Salary Group Assignment for  
Wisconsin Technical College System Director

Motion:

Move to include the provisions of LRBb 2275/1 which would add to the statutory provisions created under 2001 Wisconsin Act 29 technical cross-references to existing statutory provisions governing: (1) the calculation of retirement benefits and annual leave credits for all executive salary group employees; and (2) coverage under the state ethics code and compensatory time exclusions. Provide that these changes would be effective retroactive to February 1, 2002.

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Note:

2001 Wisconsin Act 29 created a new category of executive salary groups (called Wisconsin Technical College System Senior Executive Positions) for the positions of Director and Executive Assistant at the Wisconsin Technical College System (WTCS). These two positions, prior to this change, were each assigned to one of the general executive salary groups (ESG) that cover most of the non-elected executive positions in state agencies. The top positions in the University of Wisconsin System were previously removed from the general ESG groups and instead included in separate University of Wisconsin System Senior Executive Positions salary groups. Subsequent to the publication of Act 29, the Department of Employment Relations determined that cross-references to the existing statutory provisions governing the calculation of retirement benefits, the accrual of annual leave, coverage under the state ethics code, and exclusion from compensatory time for all executive salary group positions had not been included in Act 29 for the WTCS Executive Director position under the new salary group assignment. This motion would include those cross-references, as had been DER's intent.

MO# 311

① BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
ROSENZWEIG	Y	N	A

② GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS

EMPLOYMENT RELATIONS

Voluntary State Employee Furlough

Motion:

Move to require any state appointing authority to grant any state employee, other than an elected official or an employee nominated or appointed by the Governor to a fixed term, a voluntary furlough during the remainder of the 2001-03 fiscal biennium, not to exceed eight weeks duration. Stipulate that during the period of the voluntary furlough, the appointing authority would continue to pay the employee's fringe benefits costs, other than for Social Security, and the employee would continue to accrue benefits as though employment was continuous. Specify that the timing of any voluntary furlough would be at the discretion of the appointing authority. Stipulate that for employees included in a collective bargaining unit for which representation is recognized or certified under the State Employment Relations Act, these voluntary furlough provisions would apply unless otherwise provided in a collective bargaining agreement. Specify that all non-FED salary and Social Security fringe benefits savings amounts not expended for employees taking a voluntary furlough would lapse to the general fund.

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Note:

Because a furlough would be voluntary and a similar program has not previously been implemented, it is not known the number of state employees who might participate under the program or what the cost savings to the state would be. For any employee taking the voluntary furlough, the savings to the state would derive from lapsed non-FED salary amounts for up to eight weeks and associated fringe benefits amounts equal to 7.65% of salary to reflect the fact that the employer would not make Social Security contributions during the period of the furlough. Unspent FED salary and fringe benefits amounts must generally revert to the federal government and cannot be lapsed to the general fund.

The current value of one hour's pay for all state employees in Wisconsin and the maximum amount of savings (including Social Security savings), if all employees took an eight week furlough, are estimated as follows:

<u>Funding Source</u>	<u>Total Salary Amount with 7.65% Fringe</u>	
	<u>Hourly</u>	<u>8-Week Furlough</u>
GPR	\$659,000	\$210,880,000
PR	545,000	174,400,000
SEG	118,000	37,760,000
FED	<u>180,000</u>	<u>57,600,000</u>
Total	\$1,502,000	\$480,640,000
 Total Non-FED Amounts	 \$1,322,000	 \$423,040,000

For every 1% of payroll opting for a voluntary eight-week furlough, the potential salary and Social Security fringe benefits savings are estimated as follows:

<u>Funding Source</u>	<u>Total Salary Amount with 7.65% Fringe</u>
GPR	\$2,108,800
PR	1,744,000
SEG	377,600
FED	<u>576,000</u>
Total	\$4,806,400
 Total Non-FED Amounts	 \$4,230,400

[Change to Bill: Indeterminate]

MO# 273

② BURKE	Y	N	A
① DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
ROSENZWEIG	Y	N	A
 GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 8 NO 8 ABS \_\_\_\_\_

# State Treasurer

(LFB Summary of the Governor's Budget Reform Bill: Page 83)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	3.5% and 5.0% Budget Reduction (see Paper #1120)

# Public Service Commission

(LFB Summary of the Governor's Budget Reform Bill: Page 75)

## LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Program Revenue Lapses (see Paper #1121)
2	Segregated Revenue Transfer (see Paper #1121)

PUBLIC SERVICE COMMISSION  
WISCONSIN HEALTH AND EDUCATIONAL FACILITIES AUTHORITY

Hospital Rate Caps and Certificate of Need Requirements

Motion:

**Hospital Rate Caps**

Move to require the PSC to promulgate rules regulating rate setting for hospitals based upon a price cap methodology that would set maximum rates that a hospital may charge for services. Define "price cap" to mean the maximum rate that may be charged for a service and that includes any allowable increase in the maximum rate that is based on increases in the consumer price index.

Specify that hospitals subject to PSC regulation would be any facility for the diagnosis, treatment of and medical or surgical care for three or more unrelated patients, including those hospital facilities that provide a limited type of medical or surgical care, including orthopedic hospitals, children's hospitals, critical access hospitals, mental hospitals, psychiatric hospitals or maternity hospitals. Exempt from PSC regulation ambulatory surgery centers and any facilities owned and operated by the state except that the UW Hospital and Clinics Authority would be subject to such regulation.

*Funding and Assessments.* Create an annual PR appropriation to fund the hospital rate price caps activities of the PSC but do not provide any expenditure authority. Authorize the PSC to assess hospitals for the estimated amount of revenue necessary to fund PSC administration of the regulation of hospital rates during a fiscal year. Specify that the assessments would be in proportion to each hospital's respective net income during the hospital's most recently concluded fiscal year. Prohibit the PSC from making an assessment on any hospital that had a net income increase of 3% or less over the net income for the hospital's next most recently concluded fiscal year. Require the PSC to make an initial assessment for the 2002-03 fiscal year and to submit a request for funding to the Finance Committee by January 1, 2003, under s. 16.515 procedures. In following fiscal years, specify that each hospital would have to be assessed within 90 days of the start of the fiscal year and would have to pay the assessment by January 1, following the assessment.

*Rulemaking.* Require the PSC to consider the following when promulgating rules on price caps for hospital rates: (1) the need to reduce the rate of hospital cost increases while preserving the quality of health care in all parts of the state; (2) cost-related trend factors based on nationally recognized economic models; and (3) the past budget and rate experience of the hospital. Further, require that the rules include requirements and procedures for hospitals to provide the PSC with

information that the PSC determines is necessary to carry out its duties and for hospitals to notify the PSC and patients of rates charged and any increases or decreases in rates. Provide that the rules include requirements and procedures for the PSC to regularly review and, if necessary, revise the price caps. Authorize the rules to include any of the following: (1) exceptions from price caps for rural or teaching hospitals if the PSC determines such hospitals are subject to special circumstances that warrant an exception; and (2) a uniform system to make reports to the PSC if the PSC determines that such a system is necessary.

Require the PSC to submit these proposed rules to the Legislative Council staff for review no later than July 1, 2003. Stipulate that these rules may not take effect before January 1, 2004.

In addition, provide that the PSC may establish a system that defines rates as aggregated charges based on patient case mix measurements, if the PSC meets the following requirements: (1) submits its proposed system to the Joint Committee on Finance for approval; and (2) holds a hearing prior to promulgating rules for such a system. Provide that such a system could not take effect prior to January 1, 2004, and would have to ensure the quality of care at a reasonable cost to patients.

Prohibit the PSC, in establishing hospital rate price caps, from doing any of the following: (1) interfering directly in the personal or decision-making relationship between a patient and the patient's physician; (2) restricting the freedom of patients to receive care at a hospital consistent with their religious preferences or request a hospital that is affiliated with a religious group to act in a manner contrary to the mission and philosophy of the religious group; (3) restricting directly the freedom of hospitals to exercise management decisions in complying with the price caps; or (4) requiring the submission of unrelated financial data from religious groups affiliated with a hospital.

*Enforcement.* Require the Board on Health Care Information to provide the PSC with any information for establishing hospital rate caps. Authorize the Commission to seek judicial remedy to enforce compliance with the hospital rate price caps and with any rule or order related to the rate caps, if the Commission first notifies the hospital and provides the hospital a reasonable time to correct a violation. Require the PSC to commence any action in the circuit court for the county in which the hospital is located. Stipulate that a court may impose a forfeiture of up to \$5,000 per violation and that each week constitutes a separate violation. Authorize any court with jurisdiction to adopt additional remedies that it finds necessary to enforce compliance. Stipulate that individuals that participate in hospital rate cap setting and are acting in good faith could not be liable for any civil damages as a result of their acts or omissions.

### **Certificate of Need Requirements**

Specify that no person may enter into any commitment for financing a project that requires a certificate of need (CON) or incur any expenditures for the project without having sought and received a CON, except that this prohibition would not apply to obligations for financing conditioned upon the receipt of a CON or to obligations for predevelopment activities. Specify that the Wisconsin Health and Educational Facilities Authority (WHEFA) would be responsible for

granting a CON and ongoing monitoring of CON projects.

*Projects Requiring a Certificate of Need.* Specify that the following projects would require a CON:

- Any transfer of ownership or acquisition by lease, donation, or acquisition of control of a health care facility;
- Acquisitions of major medical equipment with a cost in the aggregate of \$1,000,000 or more, except that the use of major medical equipment on a temporary basis in the case of a natural disease, major accident or equipment failure would not require a CON;
- Obligations by or on behalf of a health care facility of any capital expenditures of \$2,000,000 or more, except that capital expenditures in the case of a natural disaster, major accident or equipment failure for replacement equipment or for parking lots and garages, information and communications systems and physician office space would not require a CON;
- Construction of a new health care facility;
- Offering or development of any new health services offered by or on behalf of a health care facility that was not offered on a regular basis by or on behalf of the facility in the 12 months prior to the time the service would be offered, if: (a) the obligation of any capital expenditures by or on behalf of a health care facility of \$100,000 or more that is associated with the addition of the new health service; or (b) the new health service is projected to entail annual operating costs of at least \$350,000, for the third fiscal year of operation after the addition of the new service;
- Termination of an existing health service;
- Any increase in the existing licensed bed complement or any increase in the licensed bed category of a health care facility;
- Any predevelopment activities, meaning any appropriately capitalized expenditures by or on behalf of a health care facility made in preparation for the offering or development of a new health services for which a CON would be required and arrangements or commitments made for financing the offering or development of the new health services, including site acquisitions, surveys, studies, expenditures for architectural designs, plans, working drawings and specifications; and
- Any proposed use of major medical equipment (equipment with a cost in the aggregate of \$1,000,000 or more) to serve inpatients of a hospital, if the equipment is not located in a health care facility and was acquired without a CON, unless otherwise exempt from the CON requirements.

Define a "health care facility" as a hospital, psychiatric hospital, rural medical center,

community health clinics, free-standing hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization center or cancer treatment center. Specify that a health care facility would not include nursing facilities or the offices of a private physician or physicians, dentist or dentists whether in individual or group practice. Specify that projects for dental facilities and community health clinics operating in federally designated health professional shortage areas (HPSAs) would not be required to receive a CON.

Authorize WHEFA to adjust the minimum expenditure requirements for capital expenditures and new health care services to reflect inflation, as reflected in the consumer price index medical index, if approval is received from the Joint Committee on Finance for such an adjustment, under a 14-day passive approval process.

*Criteria for Certificate of Need Approval.* Specify that a CON must be issued if WHEFA determines: (a) that the applicant is fit, willing and able to provide the proposed services at the proper standard of care; (b) the economic feasibility of the proposed services is demonstrated in terms of the effect on existing and projected operating budget of the applicant, the applicant's ability to establish and operate the facility or services in accordance with licensure rules, the projected impact on the facility's costs and rates of total health care expenditures in the community and the state and the availability of state funds; (c) that there is a public need for the proposed services; and (d) that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the state, that the citizens of the state have the ability to underwrite the additional costs of the proposed services and that the proposed services are in accordance with standards, criteria or plans adopted and approved pursuant to regional health plans developed by the University of Wisconsin Medical School's Public Health and Health Policy Institute, as required under this motion.

In determining whether to issue or deny a CON, require WHEFA to, among other things, consider the following: (a) whether the project will substantially address specific problems or unmet needs in the area to be served by the project; (b) whether the project will have a positive impact on the health status indicators of the population to be served; (c) whether the services affected by the project will be accessible to all residents of the area proposed to be served, as determined through an analysis of the area including population, topography and availability of transportation and health services; (d) whether there are less costly or more effective alternate methods of reasonably meeting identified health service needs of the project; (e) whether the project is financially feasible in both an intermediate and long-term time frame; (f) whether the project would produce a cost benefit in the existing health care system and the area in which the project is proposed; (g) whether the quality of any health care provided by the applicant in the past meets industry standards; and (h) whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

WHEFA would be required to issue a CON for a proposed capital expenditure if: (a) the expenditure is required to eliminate or prevent imminent safety hazards, as defined by applicable fire, building or life-safety codes and regulations, to comply with state licensure standards or to

comply with accreditation or certification standards which must be met to receive reimbursement under Medicare or medical assistance (MA); and (b) WHEFA has determined that the facility or service for which the capital expenditures is proposed is needed, the obligation of the expenditures is consistent with regional health plans and the corrective action proposed by the applicant is the most cost effective alternative available under the circumstances.

*CON Review Procedures.* In reviewing a CON application, require WHEFA to consult with local providers and to hold a public hearing in the same geographic area where the project under consideration for CON proposes to serve patients. Further, require WHEFA to maintain a mailing list of all persons who have requested to be notified of public hearings on CON applications and require WHEFA to notify all individuals of a public hearing on any CON application and issue a public notice of such hearings in the Wisconsin Administrative Register and in a newspaper of general circulation in the area to be served by a project for which the CON application is sought.

To the extent practicable, require WHEFA to complete its review and issue a final decision within 90 days after the date of the notice of a public hearing. Require WHEFA to establish criteria for determining when a completed review cannot be accomplished within 90 days of the notice of the public hearing. Specify that WHEFA can extend the review period up to an additional 60 days.

Authorize WHEFA to establish review cycles for review of applications. Specify that if WHEFA establishes such cycles, there must be at least one review cycle for each type or category of project each calendar year. Specify that the dates for these review cycles must be publicly available at least three months prior to the start of a cycle.

*Administrative Rules.* Require WHEFA to promulgate administrative rules for the purpose of establishing application and review procedures for CON applications. Require the rules to specify the information to be provided in a completed application and the timeframe for reviewing a completed application, holding a public hearing and a final decision on the completed application. Specify that these rules should identify what information would be provided to WHEFA and interested parties prior to a public hearing, including the findings, recommendations, reports, analyses and related documents prepared by WHEFA staff.

*Scope of Certificate of Need.* Specify that a CON is only valid for the defined scope, premises and facility or person named in the CON application and is not transferable or assignable. Specify that in issuing a CON, WHEFA must specify the maximum capital expenditures that may be obligated under a CON and require WHEFA to prescribe the method to be used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under a CON and procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

Require WHEFA to periodically review the progress of the holder of a CON in meeting the timetable for making the service of equipment available or for completing the project specified in the CON application.

Specify that a CON expires if the project for which the certificate has been issued is not commenced within 12 months following the issuance of the certificate. WHEFA could grant an extension of the certificate for an additional specified time not to exceed 12 months if good cause is shown why the project has not commenced.

*Emergency Certificate of Need.* Authorize WHEFA to waive, in writing, any penalties for failure to receive a CON for an otherwise reviewable project, if WHEFA determines an emergency situation exists. Require WHEFA to determine that an emergency situation exists whenever it finds that an applicant has demonstrated: (a) the necessity for immediate or temporary relief due to natural disaster, fire, unforeseen safety consideration, major accident, equipment failure, foreclosure, receivership or other circumstances determined appropriate by WHEFA; (b) the serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular CON requirements; and (c) the lack of substantial change in the facility or services that existed before the emergency situation.

*Waiver of Certificate of Need Requirement.* Authorize WHEFA to waive the requirement for CON approval if WHEFA determines that a full CON review is not necessary because the proposed project would incur no or minimal additional expense to the public or to the health care facility's clients or that the proposed project primarily involves the maintenance of a health care facility as is. Require an applicant for a waiver from CON requirements to notify the public of its intent to seek a waiver of full CON review in a daily newspaper of general circulation in the applicant's service area.

Authorize WHEFA to waive CON requirements for an acquisition of control of health care facilities, if the acquisition consists of a management agreement or similar arrangement and primarily involves day-to-day operation of the facility in its current form. WHEFA would be required to complete its review of such arrangements within 45 days of the filing of a completed application.

Authorize WHEFA to waive the CON requirements and establish a simplified review process for projects that it determines do not warrant a full review. The procedures for conducting these reviews would be established by WHEFA in rule. Specify that these requirements could only be waived if WHEFA finds that the proposed project meets an already demonstrated need as established by applicable state or regional health plans or is required to meet federal, state or local life safety codes or other applicable requirements.

By January 31<sup>st</sup> of every year, require WHEFA to report to the Governor and the Legislature on any projects which have been waived from CON requirements during the previous calendar year.

*Reconsideration of a Decision.* Provide that any person directly affected by a review could, for good cause shown, request in writing a hearing for the purposes of reconsideration of the decision of WHEFA to issue or to deny a CON. Require WHEFA, if it determines that good cause

has been demonstrated, to hold a hearing to reconsider its decision. To be effective, a request for the hearing must be received within 30 days of WHEFA's decision. If WHEFA determines that good cause has been demonstrated, the hearing must begin within 30 days of receipt of the request. A decision must be rendered within 60 days of the commencement of the hearing. Specify that good cause is shown if the person presents significant, relevant information not previously considered by WHEFA, demonstrates that there have been significant changes in factors or circumstances relied upon by WHEFA in reaching its decision, demonstrates that WHEFA has materially failed to follow its adopted procedures in reaching its decision or provides other basis for a hearing that WHEFA determined constitutes good cause.

*Remedy of a Decision.* Specify that any person aggrieved by a final decision by WHEFA is entitled to review of WHEFA's decision by the DOA Division of Hearings and Appeals. Specify that the DOA Division of Hearings and Appeals cannot review a WHEFA CON decision until WHEFA has taken final action on a request for reconsideration of a decision.

*Enforcement.* Specify that no new health care facility could obtain a license if the facility has not obtained a CON, as required under these provisions. No health care facility or other provider could be eligible to apply for, or receive any reimbursement, payment or other financial assistance from any state agency or other third party payor, either directly or indirectly, for any capital expenditure or operating costs attributable to any project for which a CON would be required but has not been obtained.

Require the Attorney General, upon request by WHEFA, to seek to enjoin any project for which a CON is required and has not been obtained and must take any other action as may be appropriate to enforce these provisions. Specify that, whoever violates any provision related to CON or any rate, rule or regulation established under this motion, would be subject to a civil penalty payable to the state of not more than \$5,000 to be recovered in a civil action.

Prohibit any health care facility or other party required to obtain a CON from separating portions of a single project into components, including, but not limited to, site facility and equipment, to evade CON requirements.

*Subsequent Review and Approval.* Require WHEFA to review and approve a project that has previously received a CON, if within three years of the issuance of the CON, one of the following occurs: (a) there is a significant change in financing; (b) there is a change affecting the licensed or certified bed capacity as approved in the original CON; (c) there is a change involving the addition or termination of the health services proposed to be rendered; (d) there is a change in the site or the location of the proposed facility; or (e) there is a substantial change proposed in the design of the facility or the type of construction.

Require any person proposing to undertake any activity requiring subsequent review and approval to file a notice with WHEFA, within 30 days of the time that the person first has actual knowledge of the change in circumstances requiring subsequent review and approval. Require WHEFA to inform the person within 30 days of receipt of such notice whether the proposed change

is approved. Specify that if the notice is not approved, it will be treated as an incomplete application for a CON.

*Implementation Reports.* Require the holder of a CON to make a written report at the end of each six-month period following a CON issuance regarding implementation activities, obligations incurred and expenditures made and any other matters WHEFA may require. Require that a summary report be made when the service or services for which the CON was issued becomes operational. For a period of one year following the implementation of the service or services for which the CON was granted, require the provider to file at six month intervals, reports concerning the costs and utilization.

Require any holder of a CON that has been issued for the construction or modification of a facility to file final plans and specifications with WHEFA within six months of the CON issuance, or any other time WHEFA may allow to determine that the plans and specifications are in compliance with the CON and are in compliance with applicable licensure, life safety code and accreditation standards.

Authorize WHEFA to revoke any CON it has issued when the person to whom it has been issued fails to file any required reports or plans and specifications on a timely basis.

*WHEFA Financing.* Prohibit WHEFA from issuing a bond to finance the purchase or expansion of a health care facility, or the purchase of major medical equipment or the provision of a new health care service, if a CON was required for the project but was not sought and received. Further, prohibit WHEFA from financing projects that do not dedicate a portion of services provided by the health care facility seeking the financing for preventive health care and health care services for low-income individuals. Require WHEFA to promulgate administrative rules establishing the standard for approving financing under this requirement.

*WHEFA Operations.* Authorize WHEFA to charge organizations submitting a CON application a fee to support WHEFA's operating costs and appropriate costs for regional health planning activities as described below. Specify that this fee should be established in proportion to the costs of the project as specified in the application for CON. Require WHEFA to promulgate rules establishing the fee schedule. Require WHEFA to contract with the University of Wisconsin Medical School for health planning activities as described below.

*Liability of WHEFA Members.* Stipulate that individuals that participate in review of CON applications and determining whether to issue a CON, or waive certain CON provision and are acting in good faith could not be liable for any civil damages as a result of their acts or omissions.

*Effective Date.* Specify that these provisions are effective January 1, 2004.

## Other Provisions

*Regional Health Planning.* Require the University of Wisconsin (UW) Medical School's Public Health and Health Policy Institute, or other UW entity designated by the Chancellor of the University of Wisconsin -- Madison, to develop comprehensive regional health plans by July, 1 2003. Require the Institute, or its designee to develop these plans in consultation with local providers, the Department of Health and Family Services (DHFS) and other appropriate entities and to use existing health planning resources as appropriate. In developing these plans, require the Institute to analyze the capacity of each of region's current health care system, including facilities, available services and professionals serving that region, and identify unmet needs and gaps in the current system and in patients' ability to access appropriate services. Additionally, require the Institute to analyze potential future health care needs of the region and identify any anticipated gaps in the system. Specify that these plans would identify specific goals and strategies to be used to address any unmet needs or current or anticipated gaps in the capacity of the system.

Require the Institute to consult with WHEFA in developing the plans to ensure that the regional health plans meet WHEFA's needs for reviewing CON applications. Specify that the plans should be developed regionally based on the existing DHFS administrative regions or other existing regional distinctions the Institute determines is appropriate. Require the Institute to review and update these plans no less than every two years. Require the Institute to develop a report summarizing the regional plans and the goals and strategies identified in these plans to address any current or identified gaps in the current health care system. Require the Chancellor to submit this report to the Legislature, the Governor, WHEFA and the DHFS Secretary by October 1, 2003.

Require the Institute to submit an annual budget to WHEFA for its health planning activities as required under this motion. Require the Institute to provide any information WHEFA determines is necessary to review and approve or modify and approve the budget submitted by the Institute. Authorize WHEFA to use revenue from the fees paid by organizations submitting a CON application, to fund the Institute's health planning activities, as approved by WHEFA.

*DHFS Licensure Activities.* Delete the current law provision that specifies that DHFS is the sole agency to adopt and enforce rules and standards pertaining to hospitals. Additionally, prohibit a health care facility from seeking licensure from DHFS for a project requiring a CON until a CON has been issued. Specify that nothing in this provision prohibits DHFS from providing technical assistance to facilities that are seeking a CON.

Note:

Under current law, the Public Service Commission regulates public utilities, including entities that produce, transmit, deliver or furnish heat, light, water or power directly or indirectly to the public, natural gas transmission and distribution facilities and telecommunications utilities. This motion would add hospital rate cap setting to these regulatory responsibilities.

Under current law, WHEFA is a quasi-public agency that issues federal tax-exempt bonds for tax-exempt health facilities and private, post-secondary educational and child care facilities. These bonds do not constitute a debt of the state or any political subdivision. Rather, the debt is payable solely from payments made by the related borrowing institutions and related assets held by the institution's trustees.

WHEFA consists of seven members nominated by the Governor and, with the advice and consent of the Senate, are approved for seven-year terms. WHEFA is required to appoint an executive director and associate director and any other employees it finds necessary. These employees are exempt from civil service but are members of the Wisconsin Retirement System. The Legislature does not appropriate operating expenses for WHEFA, nor does it provide position authority. Rather, its operating expenses are paid from fees charged to borrowing institutions.

DHFS is currently responsible for issuing licenses and enforcement of rules and standards for the construction, maintenance and operation of hospitals necessary to provide for the safe and adequate care and treatment of patients and to protect the health and safety of hospital patients and employees. DHFS reviews all capital construction and remodeling plans for hospitals to ensure they comply with all building codes established by the Department of Commerce and physical plant safety requirements established by DHFS.

MO# 316

①	BURKE	Y	(N)	A
	DECKER	(Y)	N	A
	MOORE	(Y)	N	A
	SHIBILSKI	Y	(N)	A
	PLACHE	Y	(N)	A
	WIRCH	Y	(N)	A
	DARLING	Y	(N)	A
	ROSENZWEIG	Y	(N)	A
②	GARD	Y	(N)	A
	KAUFERT	Y	(N)	A
	ALBERS	Y	(N)	A
	DUFF	Y	(N)	A
	WARD	Y	(N)	A
	HUEBSCH	Y	(N)	A
	HUBER	(Y)	N	A
	COGGS	(Y)	N	A

AYE 4 NO 12 ABS

# Regulation and Licensing

(LFB Summary of the Governor's Budget Reform Bill: Page 76)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Program Revenue Lapse (see Paper #1121)



# Employee Trust Funds

(LFB Summary of the Governor's Budget Reform Bill: Page 43)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Private Employer Health Care Coverage Program Budget Reduction (see Paper #1120)



# Employment Relations Commission

(LFB Summary of the Governor's Budget Reform Bill: Page 44)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	3.5% and 5.0% Budget Reduction (see Paper #1120)

# Personnel Commission

(LFB Summary of the Governor's Budget Reform Bill: Page 69)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	3.5% and 5.0% Budget Reduction (see Paper #1120)

# **Investment Board**

**There are no provisions in Special Session Assembly Bill 1 regarding this agency.**

# Electronic Government

(LFB Summary of the Governor's Budget Reform Bill: Page 38)

## LFB Summary Item for Which an Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Program Revenue Lapses (see Paper #1121)

## LFB Summary Item to be Addressed in Separate Legislation

<u>Item #</u>	<u>Title</u>
2	Uniform Electronic Transactions Act

# General Fund Taxes

(LFB Summary of the Governor's Budget Reform Bill: Page 46)

## LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Internal Revenue Code Update (Paper #1150)
-	Earned Income Tax Credit -- Use of Additional TANF Funds (Paper #1151)
-	Alternative General Fund Revenue Sources (Paper #1152)



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No. 2001-1

*BB - you told Kathy Franzen  
you'd support Marshfield  
Clinic this time.  
T.*

## Limiting the Property Tax Exemption for Non-Profit Medical Research Foundations

Whereas, sec. 70.11(25), Stats., exempts from taxation medical clinic property "used exclusively for the purposes of" medical and surgical research; providing instruction for practicing physicians; promoting education and training of physicians; or providing diagnostic treatment to destitute individuals; and

Whereas, certain medical research foundations, such as the Marshfield Clinic and U.W. Medical Foundation, assert that all of their satellite clinics are "used exclusively" for charitable, educational and medical research purposes and therefore qualify for the tax exemption provided by sec. 70.11(25), Stats.; and

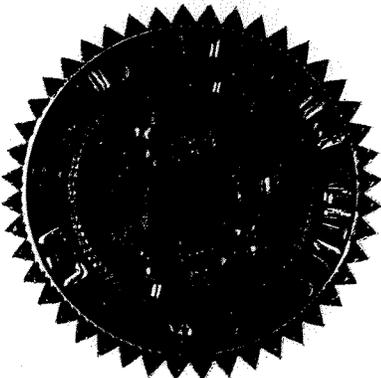
Whereas, the League maintains that this exemption should not apply to satellite medical clinics owned by medical research facilities since such clinics are primarily doctor's offices where traditional medical care is being provided to paying patients; and

Whereas, municipalities in Dane, Marathon and Eau Claire counties are currently litigating the tax exempt status of satellite clinics owned by the U.W. Medical Foundation and the Marshfield Clinic located in those municipalities; and

Whereas, the Legislature's Joint Finance Committee considered, but ultimately rejected on an 8-8 vote, a state budget motion made by Senator Russell Decker narrowing the tax exemption for nonprofit medical research foundations to the parent research facility

Now, Therefore, Be It Resolved, that the League of assembled on October 18, 2001, hereby strongly urge legislation similar to LRB-2314/4 narrowing the prop foundations so that it applies only to the locations, as where data are received, aggregated and analyzed.

*If you want to support  
Marshfield Clinic -  
you need to vote against  
Decker's motion*



Attes

*De*  
Dan T



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2314/4

JK:jlg:km

1999 BILL

Decker  
motion  
re: Marshfield  
Clinic

1 AN ACT to amend 70.11 (25); and to create 73.03 (56) of the statutes; relating  
2 to: narrowing the property tax exemption for nonprofit medical research  
3 foundations.

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**Analysis by the Legislative Reference Bureau**

This bill narrows the property tax exemption for nonprofit medical research foundations so that it applies only to the locations, as certified by the department of revenue, where data are received, aggregated and analyzed.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4 SECTION 1. 70.11 (25) of the statutes is amended to read:  
5 70.11 (25) NONPROFIT MEDICAL RESEARCH FOUNDATIONS. Property owned and  
6 operated by a corporation, voluntary association, foundation or trust, no part of the  
7 net earnings of which inure to the benefit of any shareholder, member, director or